

D R A F T

ENSURING ACCESS TO FEDERALLY CONDUCTED PROGRAMS AND ACTIVITIES BY INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY (LEP) PLAN

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OFFICE OF CIVIL RIGHTS AND DIVERSITY
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INTRODUCTION

Executive Order 13166, "Improving Access to Services for persons with Limited English Proficiency", was issued by President William Jefferson Clinton on August 11, 2000. The Order requires Federal agencies to develop and implement a plan to provide services to those with limited English proficiency (LEP) to ensure meaningful access to programs and activities conducted by those agencies.

Anything a federal agency does, including all contact with the public, falls within the scope of federally conducted programs or activities. Aside from employment, there are two major categories of federally conducted programs or activities covered by this Executive Order: those involving general public contact as part of ongoing agency operations, and those directly administered by the agency for program beneficiaries and participants.

This document (hereinafter referred to as the "LEP Plan") is issued to ensure meaningful access to DOE programs by LEP persons as mandated by Executive Order 13166.

Goal

Each component of DOE, and every program or activity conducted by the Agency, shall provide quality language assistance services to individuals with limited English Proficiency, in a timely manner, to ensure meaningful access to programs, services and activities.

In order to achieve the goal of meaningful access to programs and activities by LEP persons, each component, program and activity of DOE shall ••

1. Perform a needs and capacity assessment;
2. Arrange for oral language assistance;
3. Translate vital documents in languages other than English;
4. Train front-line and managerial staff;
5. Provide notification to LEP customers of the availability of language assistance services;
6. Develop written policies and procedures; and

7. Monitor access to language assistance.

PLAN IMPLEMENTATION

1. Needs and capacity assessment

The program or activity shall assess on an ongoing basis the language assistance needs of its customers and the capacity of the program to meet these needs.

Each program or activity should identify direct public points of contact. These could include information offices, telephone numbers regularly used by the public, including 1-800 - numbers, outreach activities, clearinghouses and public service education and announcements. They may be face to face, telephonic, written or electronic in nature.

Each program or activity should define its target audience. This may include individuals of a region, a class or a status. For example, the target population for the Weatherization program would be low-income households. Each program or activity should determine the number or proportion of LEP persons within the target population.

Each program or activity should implement a process for data collection and recording. Customers shall be asked his or her language preference and that information shall be recorded for future contact and for statistical purposes. The number of LEP persons, by language, in the targeted population shall be identified. The frequency with which LEP persons come into contact with the program shall be determined. Demographic data sources should include Census, state agencies and commercial marketing data, school systems, community organizations, national ethnic organization and the Internet.

2. Oral language assistance

Each component, program or activity of DOE will arrange for oral language assistance to LEP customers in face to face and telephone contact.

Such assistance may take the form of bilingual staff, oral interpreters, staff personnel or volunteers.

Bilingual staff should be employed in programs and activities where the number or percentage of LEP customers or potential customers is statistically significant, or where the frequency of contact with such persons makes the employment of bilingual staff a more efficient and effective mode for communication. A decision to employ bilingual staff should be made after a needs assessment, with due consideration being given to the budgetary constraints of the program.

A four step process should be employed to determine whether bilingual staffing is the most efficient option. First, determine the number or proportion of LEP persons to be served;

second, determine the frequency of contact between LEP persons and the program; third, assess the nature and importance of the program; and fourth, assess available resources.

Every DOE component, program or activity must affirmatively budget for language services to ensure that adequate resources exist for interpreters, translation and review of documents, and outreach. Notwithstanding any limitations of current budget, programs shall include language assistance resources as items of their FY 2002 budget requests. Programs should be prepared to justify any failure to request funding for language assistance where the data indicate a clear and evident need for such assistance.

Contractual translation or interpreter services may be an option for some programs where the needs assessment suggest less frequent contact with LEP customers. The General Services Administration (GSA) has streamlined the procurement process for all of DOE's components, as well as, for all other Federal agencies. Language Services Multiple Award Schedule (MAS) is a procurement device used to access language services from industry experts. The contracts awarded under the MAS schedule bring together top-quality companies in translation, interpretation and language training services. Additional information regarding this service may be obtained from the Internet at www.northwest.gsa.gov/fss/msc.

Bilingual staff or contractors must be assessed for bilingual proficiency, interpretation skills and sensitivity to the special confidentiality issues raised by interpreting for others.

Programs should not use family members or friends to translate or interpret for LEP persons. If the LEP customer insists upon using a friend or family member, it should be allowed only after language services have been offered and refused. Minor children should never be used to interpret, except in emergencies.

3. Translation of written materials

Each component, program or activity shall translate its vital documents into languages other than English where a significant number or percentage of the customers served or eligible to be served have limited English proficiency. Written materials include electronic documents and web-sites.

“Vital documents” are documents that convey information that critically affects the ability of the program recipient to make decisions about his or her participation in the program. Vital documents include applications, public notices, consent forms, letters containing important information regarding participation in a program, eligibility rules, notices pertaining to the reduction, denial or termination of services or benefits, right to appeal, notices advising of the availability of language assistance, outreach and community education materials.

Every DOE component, program or activity shall develop criteria for deciding which documents are vital and subject to translation.

At a minimum, programs should translate client or consumer oriented documents that affect a person's ability to apply for, receive or otherwise have access to programs or services, including anything that affects the legal rights of the person.

For lengthier and more technical documents that are targeted to the public, programs should provide an English language summary that is then translated into other languages.

If the English-language version of a document is posted on a web-site because it is deemed vital information, then the translated document must also be posted. Entire web-sites do not need to be translated.

Every DOE component, program or activity shall adopt procedures to ensure the quality of the documents that are translated. All translations should involve a two-tier process of initial translation and independent review. Technical documents should include "back translation" (translating back into English) to check their accuracy.

If the English-language version of a document is posted on a web-site because it is deemed vital information, then the translated document must also be posted. Entire web-sites do not need to be translated.

Programs should be sensitive to the literacy levels of the LEP customers. Some immigrants are illiterate in their native language, as well as English. Focus groups or community based organizations can be helpful in testing messages and language appropriateness. Also, be mindful of other alternatives, such as the use of audio or video tapes to provide information.

It is good business practice to develop procedures to ensure that translation of documents is ongoing and that revisions take place as warranted.

4. Training

Each DOE component, program or activity shall train front-line and managerial staff on the policies and procedures of its language assistance activities.

Staff should receive training in the policies and procedures of language assistance and on how to determine whether language assistance services are needed by a customer.

Staff should receive training on securing language assistance services for a customer, and on how to work with interpreters and translators.

5. Notification of availability of language assistance services

Every DOE component, program or activity shall inform LEP customers of the availability of free language assistance services. The notification shall be made orally and in writing and should

be given at the first point of contact.

Notification of free language assistance should be given in the language of the LEP customer.

Language assistance must be provided during all hours of service.

Programs should engage in comprehensive outreach to assure awareness by LEP persons of its programs and activities. Outreach should include the use of ethnic media, such as radio, television, newspapers, magazines web-sites, faith-based organizations, community based organizations at local levels that provide social services, healthcare, and classes.

6. Develop written policies and procedures

Each component of DOE, program or activity shall develop specific written policies and procedures related to language assistance services.

Written policies and procedures should address the following areas:

- a) provision of language services generally
- b) identifying and assessing language needs
- c) oral language assistance; including charges, if any, for services
- d) written translations
- e) oral and written notification of the availability of language assistance
- f) staff training on language service provision
- g) monitoring access to language assistance

Each DOE component, program or activity shall designate and forward to the Office of Civil Rights and Diversity, the name, title, and telephone number of the individual responsible for coordinating policies and procedures concerning language access services.

7. Monitor access to language assistance

Each DOE component shall institute procedures to monitor the accessibility and quality of language assistance activities for LEP customers.

Data collection and record keeping are key to an effective monitoring and compliance system. In order to determine the validity of complaints regarding language assistance, it is necessary to analyze and review data that reflects how the program provides services to LEP persons. Data collection also allows the program to obtain an overview of how their services are provided.

Each DOE component, program or activity shall develop and maintain a data collection

system that assures the availability of data that includes race, ethnicity, and the primary language of customers and clients served in its programs and the primary language of those persons. Such data should include the data upon which the program has based language needs assessment, the number of LEP persons, by language group, who received language services, names and categories of staff receiving training, and dates of training.

Procedures shall be instituted to review access to language assistance services and to review the quality of these services.

Each component of DOE shall institute a process for handling complaints from customers about language assistance, to include data compilation. Components shall be primarily responsible for processing complaints filed by LEP persons, and shall develop a process for the filing of complaints. The complaint process should inform customers and clients on how to file a complaint, provide a means of recording and resolving complaints. Complaints that are unable to be resolved must be referred to the Office of Civil Rights and Diversity for action. In addition, complaint data shall be included in each components Annual Workload and Performance data report (Executive Order 12250 Information and Reporting Requirements).

TECHNICAL ASSISTANCE

Technical assistance will be provided by the Office of Civil Rights and Diversity to each program office of DOE and every contractor that administers DOE programs or activities. Technical assistance will consist of advising programs on the requirements of this plan and its implementation, including assistance in developing individual program plans, availability of technical and professional translating and interpreter resources, web-site development and modifications, and telephone translation services. Training on policies and procedures, and staff development and training will be made available to all program managerial staff.

Diversity Coordinators for program offices shall have oversight responsibility for the language assistance services, as well as responsibility for providing technical assistance to its programs.

COMPLIANCE AND ENFORCEMENT

EEO/Diversity Managers for field operations shall have primary responsibility for ensuring compliance with the LEP Plan. In determining compliance with the plan, the Managers and the Office of Civil Rights and Diversity will assess whether the programs' policies and procedures allow LEP persons to overcome language barriers and participate in a meaningful way in programs, services and benefits. The program's appropriate use of methods and options detailed in this LEP Plan will be viewed as evidence of an intent to comply. Likewise, certain practices may constitute a violation of the program's responsibility under the LEP Plan.

Examples of prohibited practices:

" Providing services to LEP persons that are more limited in scope or are lower in

- quality than those provided to other persons;*
- " Subjecting LEP persons to unreasonable delays in the delivery of services;*
- " Limiting participation in a program or activity on the basis of English proficiency;*
- " Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or*
- " Failing to inform LEP persons of the rights to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.*

Complaints by LEP persons will be investigated by Office of Civil Rights and Diversity in the manner prescribed by *Code of Federal Regulations*, Title 10 Part 1040.89-5 that governs federally assisted programs and activities. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Anyone who believes that he or she has been discriminated against because of national origin may file a complaint with the Office of Civil Rights and Diversity at 1000 Independence Ave., S.W., Room 5B168, Washington, D.C. 20585 or with the EEO/Diversity field operations offices.